



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,627	12/06/2000	Mohan Vishnupad	370-19	9463

7590 04/10/2002

Peter DeLuca
Dilworth & Barrese, LLP
333 Earle Ovington Blvd.
Uniondale, NY 11553

EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
1751	S

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/730,627	Applicant(s) Vishnupad
Examiner Brian Mruk	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Apr 8, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5 and 7-26 is/are rejected.

7) Claim(s) 6 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) Other: _____

Art Unit: 1751

DETAILED ACTION

1. The examiner makes of record that the phrase “substantially anhydrous” in instant claims 1 and 23 is construed to mean less than 5% by weight of water, as defined by applicant on page 3, line 5 of the instant specification.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The phrase “greater than about” in claim 10 renders the claim vague and indefinite. The phrase “greater than about” renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase “greater than about”. It is unclear what values are encompassed by the phrase “greater than about”. The examiner suggests that this phrase should be changed to either “greater than” or “of about”. “Claims reciting “greater than about” are invalid for indefiniteness where there was close prior art and there was

Art Unit: 1751

nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b).

Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1-5, 7-11, 16-17, 21 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Mast, U.S. Patent No. 4,140,656.

Mast, U.S. Patent No. 4,140,656, discloses an anhydrous facial cleanser comprising 49.5-96.9% by weight of mineral oil, 3-50% by weight of a phosphate ester, 0.1-5% by weight of a carboxy vinyl polymer, perfume, coloring agents and alternate oils (col. 3, lines 30-37). Specifically, note Example 3, which discloses a gel comprising 88.46% by weight of mineral oil, 9.96% by weight of Crodafos N3 neutral, 0.5% by weight of Carbopol 941, 0.1% by weight of n-propyl-p-hydroxybenzoate, 0.05% by weight Wilson 1000C, 0.5% by weight of Green #6, 0.4%

Art Unit: 1751

by weight of a perfume and 0.03% by weight of Mearlmaid OL having a viscosity of 8,6000 cps, per the requirements of the instant invention. Therefore, claims 1-5, 7-11, 16-17, 21 and 23-24 are anticipated by Mast, U.S. Patent No. 4,140,656.

7. Claims 1-5, 7-18, 21 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Vora et al, U.S. Patent No. 4,056,615.

Vora et al, U.S. Patent No. 4,056,615, discloses a composition in gel form comprising 1000 milligrams of lucknomyycin, 98 grams of glycerol, 2 grams of Carbopol 940, 2 grams of Tween 40, 0.1 grams of citric acid, 0.2 grams of nordihydroguaiaretic acid, and triethanolamine to balance (see col. 4, lines 40-47), per the requirements of instant claims 1-5, 7-18, 21 and 23-24. The examiner asserts that the gel composition disclosed by Vora et al would inherently meet the viscosity requirements of instant claims 1 and 10-12, absent a showing otherwise. Therefore, instant claims 1-5, 7-18, 21 and 23-24 are anticipated by Vora et al, U.S. Patent No. 4,056,615.

8. Claims 1-5, 7, 10-17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Duffy et al, U.S. Patent No. 6,020,367.

Duffy et al, U.S. Patent No. 6,020,367, discloses a lotion composition comprising 3.9% by weight of polyethylene glycol, 60% by weight of glycerin, 0.1% by weight of Carbopol 940, 5% by weight of propylene glycol, 15% by weight of ethanol, 15% by weight of ascorbic acid and 1% by weight of salicylic acid (col. 10, Example 1), per the requirements of instant claims 1-

Art Unit: 1751

5, 7, 10-17 and 19. The examiner asserts that the lotion composition disclosed by Duffy et al in Example 1 would inherently meet the viscosity requirements of instant claims 1 and 10-12, absent a showing otherwise. Therefore, instant claims 1-5, 7, 10-17 and 19 are anticipated by Duffy et al, U.S. Patent No. 6,020,367.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8-9 and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al, U.S. Patent No. 6,020,367.

Duffy et al, U.S. Patent No. 6,020,367, is relied upon supra as disclosing a lotion composition comprising 3.9% by weight of polyethylene glycol, 60% by weight of glycerin, 0.1% by weight of Carbopol 940, 5% by weight of propylene glycol, 15% by weight of ethanol, 15% by weight of ascorbic acid and 1% by weight of salicylic acid (col. 10, Example 1). It is further taught by Duffy et al that the lotion composition may additionally contain surfactants, such as acyl isethionates (col. 7, lines 25-44), and salicylate derivatives (col. 8, lines 15-58), per the requirements of instant claims 20-26. Duffy et al discloses that the thickening agents, including

Art Unit: 1751

Carbopol™, may be present in the composition in amounts of 0.01-5% by weight (col. 8, lines 3-11), per the requirements of instant claim 8-9. Although Duffy et al generally teaches the inclusion of acyl isethionates, salicylate derivatives and 0.01-5% by weight of a thickening agent in their lotion composition, the reference does not require these components with sufficient specificity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a lotion composition, as taught by Duffy et al, which additionally contained acyl isethionates, salicylate derivatives and 0.01-5% by weight of a thickening agent. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a lotion composition containing acyl isethionates, salicylate derivatives and 0.01-5% by weight of a thickening agent is expressly suggested by the Duffy et al disclosure and therefore is an obvious formulation.

Allowable Subject Matter

11. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach or suggest in general an anhydrous composition comprising an organic solvent and a thickening agent comprising a mixture of polyacrylamide,

Art Unit: 1751

C₁₃₋₁₄ isoparaffin and Laureth-7 with a viscosity of at least 1000 cps, as required by applicant in instant claim 6.

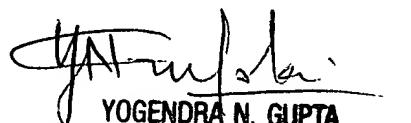
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM
Brian Mruk
April 7, 2002


YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700